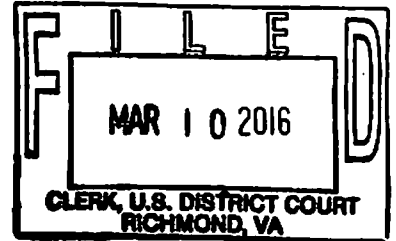


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA)
)
v.)
)
JOSE M. FUENTES)

Criminal No. 3:03CR114-HEH
Civil No. 3:16CV151

MEMORANDUM OPINION
(Dismissing Successive 28 U.S.C. § 2255 Motion)

By Memorandum Opinion and Order entered on July 22, 2005, the Court denied a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 filed by Jose M. Fuentes. On February 29, 2016, the Court received from Fuentes, a “MOTION 28 U.S.C. § 2255(e) SAVINGS CLAUSE ACTUAL INNOCENCE” in which he attempts to raise a challenge to his sentence (§ 2255 Motion, ECF No. 75). The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a “‘gatekeeping’ mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). The Court has not received authorization from the United States Court of Appeals to hear

Fuentes's successive § 2255 Motion. Accordingly, the § 2255 Motion (ECF No. 75) will be dismissed for want of jurisdiction.

An appeal may not be taken from the final order in a § 2255 proceeding unless a judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(B). A COA will not issue unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). Fuentes has not satisfied this standard. Accordingly, a certificate of appealability will be DENIED.

An appropriate Order will accompany this Memorandum Opinion.

Date: March 9, 2016
Richmond, Virginia

HEH /s/
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE